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| APPLICATION NO.             | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------|-------------|----------------------|---------------------|------------------|
| 09/769,960                  | 01/25/2001  | R. Rox Anderson      | 105159-29           | 5919             |
| 21125                       | 7590        | 03/11/2005           |                     |                  |
| NUTTER MCCLENNEN & FISH LLP |             |                      | EXAMINER            |                  |
| WORLD TRADE CENTER WEST     |             |                      |                     | SHAY, DAVID M    |
| 155 SEAPORT BOULEVARD       |             |                      | ART UNIT            | PAPER NUMBER     |
| BOSTON, MA 02210-2604       |             |                      |                     | 3739             |

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                  |
|------------------------------|------------------------|------------------|
| <b>Office Action Summary</b> | Application No.        | Applicant(s)     |
|                              | 09/769,960             | ANDERSON ET AL.  |
|                              | Examiner<br>david shay | Art Unit<br>3739 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

### A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on September 27, 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-13, 16-20 and 22-74 is/are pending in the application.
- 4a) Of the above claim(s) 1-12, 28-38, 45-56, 61-65, 69 and 70 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 13, 16-20, 22-27, 39-44, 57-60 and 71-74 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 13, 16-20, 22-27, 39-44, 57, 60, and 71 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Tankovich ('211).

See column 2, line 53 to column 3, line 57; column 7, line 10 to column 10, line 54; column 12, line 39 to column 16, line 23; column 30, line 51 to column 32, line 10.

Claims 13, 16-20, 22-27, 39-44, 57-60, and 73 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Altshuler ('813).

See the abstract; column 1, line 29 to column 3, line 56; column 4, line 59 to column 5, line 32; and column 7, line 5 to column 12, line 57.

Claims 66 and 68 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Knowlton ('868).

Claims 57-60 and 66-68 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Knowlton ('276).

Claims 13, 16-20, 22-27, 39-44, 57-60 and 73 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Altshuler et al ('475).

Applicants arguments regarding Chen et al are noted. This reference has not been applied to the amended claims.

With regard to the Knowlton references these remain only applied to claims 66-68. Arguments drawn to other claims are thus moot. Regarding claims 66-68, it appears applicant has misread the Knowlton reference, as the solution of Knowlton is intended to transmit the radiation (see column 3, lines 19-27). However, as there is no showing of record that melanin is

absolutely and completely transparent to (i.e. absorbs not one single quanta of) the electromagnetic radiations taught by the Knowlton references, therefore, the absorbed radiation will impart some heat to the melanin and the heat, due to the reverse thermal gradient of Knowlton, will migrate to the surface of the skin. This applicants assertions to the contrary, base on a faulty assessment of the teachings of Knowlton references, is not convincing.

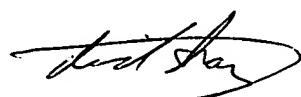
Applicant's arguments filed September 24, 2004 have been fully considered but they are not persuasive. The arguments are not convincing for the reasons set forth above.

Applicant's arguments with respect to claims 13, 16-20, 22-27, 39-44, 57-60 and 71-74 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to david shay at telephone number (571) 272-4773.



DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330